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6/25/01
JR

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

LOUIS F. BOTTORFF,

Petitioner

v.

STATE OF FLORIDA, et al.,

Respondent

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CIVIL NO. 1:CV-01-0873

(Judge Kane)

FILED
HARRISBURG, PA

JUN 22 2001

MARY E. D'ANDREA, CLERK
Per Jennifer Kennedy Deputy Clerk

ORDER

Background

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 filed by Louis F. Bottorff, an inmate presently confined at the United States Penitentiary, Lewisburg, Pennsylvania (USP-Lewisburg). Along with his petition, Bottorff has filed an application for leave to proceed in forma pauperis. For the reasons outlined below, petitioner will be granted temporary in forma pauperis status for the purpose of filing this action. However, since the petitioner challenges future confinement based on a detainer growing out of a state conviction, this petition should be considered as an action under § 2254. The petition will now be given preliminary consideration pursuant to Rule 4 of the Rules Governing Section 2254 Cases, 28 U.S.C. foll. § 2254.

Certified from the record

Date 6-22-01

Mary E. D'Andrea, Clerk

Per Jennifer Kennedy Deputy Clerk

The named respondents are the State of Florida, and USP-Lewisburg Warden Donald Romine. The Petitioner states that he is not challenging his ongoing federal sentence, but is "attacking a future sentence". Specifically, he states that "a detainer has been lodged with the federal government by the County of Hillsborough, Florida, seeking to extradite the movant for the purpose of executing a fifteen year old sentence imposed in 1986". (Doc. No. 1, petition). Although petitioner does not provide specific dates, it appears from his petition that he was sentenced to two consecutive eleven (11) year state sentences, ordered to run consecutive to his federal sentence. Id. He argues that the state court "lost all jurisdiction over [him] when they relinquished jurisdiction to the federal government for the purpose of [petitioner] to serve a presumptive twenty-five year sentence". Id. Petitioner believes that "punishment and rehabilitation has occurred during the past fifteen years the petitioner has been incarcerated". Thus, he seeks to have the Florida charges deemed a "lesser-included offense in the federal indictment". Id.

This court recognizes that a petition for writ of habeas corpus is the proper vehicle for challenging the legality of a detainer. However, since Bottorff is challenging future confinement based on a detainer arising out of a state criminal proceeding, his petition will be construed as seeking habeas relief under 28 U.S.C.

§ 2254. See Jones v. Federal Bureau of Prisons, Civil No. 1:CV-99-1448, slip op. at 3 (M.D. Pa. October 22, 1999) (Rambo, J.). It is also noted that federal habeas relief is only available if the applicant has exhausted the remedies available to him in the state which issued the detainer. See United States ex rel. Jennings v. State of Pennsylvania, 429 F. 2d 522, 523 (3d Cir. 1970).

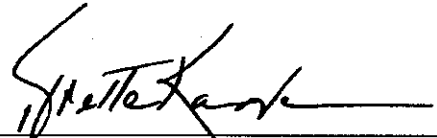
Title 28 U.S.C. § 1404(a) provides that: "For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any district or division where it might have been brought." Since habeas corpus proceedings are civil in nature, they are subsumed under the phrase "any civil action." See United States ex rel. Meadows v. State of New York, 426 F.2d 1176 (S.D. N.Y. 1970). With this provision in mind, the action could have been brought in the United States District Court for the District of Florida and the Middle District of Pennsylvania is not a convenient forum within which to attack a detainer lodged by another state. See Hoffman v. Blaski, 363 U.S. 335 (1960) (Where a prisoner brings an action in the district of confinement attacking a detainer lodged by another state, the court can, of course, transfer the suit to a more convenient forum); See also Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484 (1973) (The state holding the prisoner in immediate confinement acts as agent for the demanding state (the principal), the custodian state is presumably indifferent to the

resolution of the prisoner's attack on the detainer, and the action could be transferred to the district court in the demanding state). The validity of a detainer issued by the State of Florida, and a decision as to whether Bottorff has exhausted his available Florida state court remedies are best determined by a federal judge familiar with the laws of that state.

Petitioner states that his underlying state convictions occurred in Hillsborough and Pasco counties which are both located within the confines of the United States District Court for the Middle District of Florida. Pursuant to §1404(a), Bottorff's petition will be transferred to the Middle District of Florida. An appropriate order will enter.

NOW, THEREFORE, THIS 21st DAY OF JUNE, 2001, IT IS HEREBY ORDERED THAT:

1. Petitioner is granted temporary in forma pauperis status.
2. The petition for writ of habeas corpus is construed as seeking relief under 28 U.S.C. § 2254.
3. The Clerk of Court is directed to transfer this case to the United States District Court for the Middle District of Florida. See 28 U.S.C. § 1404(a).
4. The Clerk of Court is directed to close the case.



YVETTE KANE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

June 22, 2001

Re: 1:01-cv-00873 Bottorff v. State of Florida

True and correct copies of the attached were mailed by the clerk
to the following:

Louis F. Bottorff
USP-LEW
U.S. Penitentiary at Lewisburg
06324-018
P.O. Box 1000
Lewisburg, PA 17837

cc:

Judge

Magistrate Judge

U.S. Marshal

Probation

U.S. Attorney

Atty. for Deft.

Defendant

Warden

Bureau of Prisons

Ct Reporter

Ctroom Deputy

Orig-Security

Federal Public Defender

Summons Issued

Standard Order 93-5

Order to Show Cause

Bankruptcy Court

Other

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Pro Se Law Clerk

INS

Jury Clerk

with N/C attached to complt. and served by:
U.S. Marshal () Pltf's Attorney ()

with Petition attached & mailed certified mail
to: US Atty Gen () PA Atty Gen ()
DA of County () Respondents ()

MARY E. D'ANDREA, Clerk

DATE:

6-22-01

BY:

Deputy Clerk